



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0647]

RIN 1625-AA00

Safety Zone; CBWTP Outfall Diffuser Improvements, Columbia River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the Columbia River. This action is necessary to provide for the safety of life on these navigable waters near Portland, OR, at Columbia River Mile 105.6 from October 1, 2021, through February 28, 2022. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0647 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email D13-SMB-MSUPortlandWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On July 20, 2021, Ballard Marine Construction notified the Coast Guard that it would begin construction for their CBWTP Outfall Diffuser Improvements Project from 12:01 a.m. on October 1, 2021, through 11:59 p.m. on February 28, 2022, to remove and replace existing pipeline along with dredging operations. The construction project includes the two Outfall easements (001 and 003) being dredged with diver assistance to expose existing risers and diffusers. The existing risers and diffuser valves will be removed and disposed of. In their place, longer risers will be attached along with new diffuser valves. Additionally, the Outfalls will be dredged to remove the treated effluent that has settled inside the main trunk lines if needed. All diver work will be supported by a floating crane barge approximately 50 feet by 185 feet that will be anchored during the duration of work upon each of the two specified Outfalls and will be moved within the zone approximately four times. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the construction project would be a safety concern for anyone within the designated area of the CBWTP Outfall Diffuser Improvements.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable

waters within the designated area of the CBWTP Outfall Diffuser Improvements construction project. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from October 1, 2021, through February 28, 2022. The safety zone would cover all navigable waters of the Columbia River, surface to bottom, approximately 300 yards to the east and west side of the Burlington Northern Railroad Bridge on the Oregon side of the Columbia River from the shoreline to the outside of the main navigational channel; specifically beginning at the shoreline at 45°37'26.2"N, 122°41'46.91"W, northeast to 45°37'33.206"N, 122°41'37.699"W, southeast to 45°37'23.4"N, 122°41'18.1"W, thence southwest to 45°37'16.27"N, 122°41'30.75"W, and along the shoreline back to the beginning point. The duration of the zone is intended to ensure the safety of vessels and these navigable waters while the construction is underway. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to act on his behalf, or a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the safety zone. Vessel operators desiring to enter or operate with the safety zone would contact the COTP's on- scene designated representative by calling (503) 209-2468 or the Sector Columbia River Command Center on Channel 16 VHF-FM. Those in the safety zone would comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and

Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River during the construction project. Moreover, the Coast Guard would issue a Notice to Mariners about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction

qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this

proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 85 days that would prohibit vessel traffic to transit the area during construction operations. Normally such actions are categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. If you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

2. Add § 165.T13-0647 to read as follows:

§ 165.T13-0647 Safety Zones: Safety Zone; CBWTP Outfall Diffuser Improvements, Columbia River, Portland, OR.

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°37'26.2"N, 122°41'46.91"W, northeast to 45°37'33.206"N, 122°41'37.699"W, southeast to 45°37'23.4"N, 122°41'18.1"W, thence southwest to 45°37'16.27"N, 122°41'30.75"W, and along the shoreline back to the beginning point.

(b) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by calling (503) 209-2468 or the Sector Columbia River Command Center on Channel 16 VHF-FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This safety zone is in effect from 12:01 a.m. on October 1, 2021, through 11:59 p.m. on February 28, 2022. It will be subject to enforcement this entire period unless the Captain of the Port, Sector Columbia River determines it is no longer needed, in which case the Coast Guard will inform mariners via Notice to Mariners.

Dated: August, 17, 2021.

M. Scott Jackson,
Captain, U.S. Coast Guard,
Captain of the Port Sector Columbia River.

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